

1 LEWIS KOHN & FITZWILLIAM LLP
2 Kent M. Walker (173700)
3 10935 Vista Sorrento Pkwy, Suite 370
4 San Diego, CA 92130
5 Telephone: (619) 446-5603
6 Facsimile: (619) 923-2959
7 kwalker@lewiskohn.com

8 *Attorneys for Defendants ISAAC CALDERON, MAHONRY J.*
9 *SANCHEZ, VENTO NORTH AMERICA, LLC, and LIME PRO*
10 *EQUIPMENT USA*

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **ICON HEALTH & FITNESS, INC.,**

14 **Plaintiff,**

15 **v.**

16 **ISAAC CALDERON, MAHONRY J.**
17 **SANCHEZ, VENTO NORTH AMERICA,**
18 **LLC, and LIME PRO EQUIPMENT USA,**

19 **Defendants.**

Case No. 3:12-cv-02029 JAH WMc

ISAAC CALDERON'S, MAHONRY J.
SANCHEZ'S, VENTO NORTH AMERICA,
LLC'S, and LIME PRO EQUIPMENT USA'S
ANSWER, AFFIRMATIVE DEFENSES,
AND DEMAND FOR JURY TRIAL

Complaint Filed: August 16, 2012

Answer Due: October 5, 2012

20 Defendants Isaac Calderon, Mahonry J. Sanchez, Vento North America, LLC, and Lime Pro
21 Equipment USA, ("LIME PRO") respond to the Complaint of Icon Health & Fitness, Inc. ("ICON")
22 as follows, where each paragraph number in the ANSWER corresponds to the same paragraph
23 number in the Complaint.

24 **ANSWER**

25 1. Admitted

26 2. LIME PRO admits that Isaac Calderon is an individual residing in the State of
27 California and denies the remaining allegations in this paragraph.

28 3. Denied.

1 4. LIME PRO admits that Vento North America L.L.C. is a California limited liability
2 company doing business at 9265 Activity Road Ste. 112, San Diego, California 92126 having done
3 business as Lime Pro Equipment and denies any remaining allegations in this paragraph.

4 5. LIME PRO is without sufficient information to form a belief as to the allegations in
5 this paragraph and denies the allegations on that basis.

6 6. Denied.

7 7. LIME PRO admits that the civil action exists and denies any remaining allegations in
8 this paragraph including but not limited to the allegations of liability, if any.

9 8. LIME PRO admits that the civil action exists and denies any remaining allegations in
10 this paragraph including but not limited to the allegations of liability, if any.

11 9. LIME PRO admits that the civil action exists and denies any remaining allegations in
12 this paragraph including but not limited to the allegations of liability, if any.

13 10. Denied.

14 11. Denied.

15 12. Denied.

16 13. Denied.

17 14. LIME PRO is without sufficient information to form a belief as to the allegations and
18 denies the allegations on that basis, except that LIME PRO admits that the Registrar of the domain is
19 GoDaddy and Isaac Calderon at calderon@vento.com is identified as a Whois contact for the
20 domain.

21 15. Denied.

22 16. Denied.

23 17. Denied.

24 18. LIME PRO is without sufficient information to form a belief as to the allegations in
25 this paragraph and denies the allegations on that basis.

26 19. LIME PRO is without sufficient information to form a belief as to the allegations in
27 this paragraph and denies the allegations on that basis.
28

1 20. LIME PRO is without sufficient information to form a belief as to the allegations in
2 this paragraph and denies the allegations on that basis.

3 21. LIME PRO is without sufficient information to form a belief as to the allegations in
4 this paragraph and denies the allegations on that basis.

5 22. LIME PRO is without sufficient information to form a belief as to the allegations in
6 this paragraph and denies the allegations on that basis.

7 23. LIME PRO is without sufficient information to form a belief as to the allegations in
8 this paragraph and denies the allegations on that basis.

9 24. LIME PRO is without sufficient information to form a belief as to the allegations in
10 this paragraph and denies the allegations on that basis.

11 25. LIME PRO is without sufficient information to form a belief as to the allegations in
12 this paragraph and denies the allegations on that basis.

13 26. LIME PRO is without sufficient information to form a belief as to the allegations in
14 this paragraph and denies the allegations on that basis.

15 27. Denied.

16 28. Denied.

17 29. Denied.

18 30. Denied.

19 31. Denied.

20 32. Denied.

21 33. Denied.

22 34. Denied.

23 35. Denied.

24 36. Denied.

25 37. Denied.

26 38. Denied.

27 39. Denied.

1 40. Denied.

2 41. Denied.

3 42. Denied.

4 43. Denied.

5 44. Denied.

6 45. Denied.

7 46. Denied.

8 47. Denied.

9 48. Denied.

10 49. LIME PRO admits that Isaac Calderon worked as a distributor for ICON and is
11 without sufficient information to form a belief as to the remaining allegations in this paragraph and
12 denies the allegations on that basis.

13 50. LIME PRO admits that Mahonry J. Sanchez worked as a sales manager for ICON and
14 is without sufficient information to form a belief as to the remaining allegations in this paragraph
15 and denies the allegations on that basis.

16 51. LIME PRO is without sufficient information to form a belief as to the allegations in
17 this paragraph and denies the allegations on that basis.

18 52. LIME PRO is without sufficient information to form a belief as to the allegations in
19 this paragraph and denies the allegations on that basis.

20 53. Denied.

21 54. Denied.

22 55. Admitted.

23 56. Admitted.

24 57. Admitted.

25 58. Denied.

26 59. Denied.

27 60. Denied.

1 61. Denied.

2 62. Denied.

3 63. Denied.

4 64. LIME PRO is without sufficient information to form a belief as to the allegations in
5 this paragraph and denies the allegations on that basis.

6 65. LIME PRO is without sufficient information to form a belief as to the allegations in
7 this paragraph and denies the allegations on that basis.

8 66. Denied.

9 **FIRST CAUSE OF ACTION**

10 67. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 66
11 as if set forth herein.

12 68. Denied.

13 69. Denied.

14 70. Denied.

15 71. Denied.

16 72. Denied.

17 **SECOND CAUSE OF ACTION**

18 73. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 72
19 as if set forth herein.

20 74. Denied.

21 75. Denied.

22 76. Denied.

23 77. Denied.

24 **THIRD CAUSE OF ACTION**

25 78. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 77
26 as if set forth herein.

27 79. Denied.

1 80. Denied.

2 81. Denied.

3 82. Denied.

4 **FOURTH CAUSE OF ACTION**

5 83. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 82
6 as if set forth herein.

7 84. Denied.

8 85. Denied.

9 86. Denied.

10 87. Denied.

11 88. Denied.

12 **FIFTH CAUSE OF ACTION**

13 89. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 88
14 as if set forth herein.

15 90. Denied.

16 91. Denied.

17 92. Denied.

18 93. Denied.

19 **SIXTH CAUSE OF ACTION**

20 94. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 93
21 as if set forth herein.

22 95. Denied.

23 96. Denied.

24 97. Denied.

25 98. Denied.

SEVENTH CAUSE OF ACTION

99. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 98 as if set forth herein.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

EIGHTH CAUSE OF ACTION

109. LIME PRO incorporates its responses to the corresponding paragraphs 1 through 108 as if set forth herein.

110. Denied.

111. Denied.

112. Denied.

113. LIME PRO is without sufficient information to form a belief as to the allegations in this paragraph and denies the allegations on that basis.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

ICON has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part on the grounds that ICON has not been damaged.

THIRD AFFIRMATIVE DEFENSE

ICON's claims are barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

ICON's claims are barred by the equitable doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part due to ICON's consent to and/or acquiescence of LIME PRO's uses or acts.

SIXTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part due to ICON's lack of damages.

SEVENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part because the alleged factual basis for one or more of its purported causes of action is based entirely on acts and omissions occurring outside of the United States and outside of the jurisdiction of this Court.

EIGHTH AFFIRMATIVE DEFENSE

ICON failed to take reasonable steps to mitigate, alter, reduce, or otherwise diminish its alleged damages, and accordingly, is barred from recovery of any damages that might have been prevented by such mitigation.

NINTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part to the extent that they are barred by the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part due to the invalidity and/or lack of enforceability of ICON's purported trademarks at issue.

TWELFTH AFFIRMATIVE DEFENSE

ICON's claims for treble and/or punitive damages are barred on the grounds of insufficient allegations and facts and legal support.

THIRTEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred on the grounds of the First Amendment of the United States Constitution and applicable state constitutions and LIME PRO freedom of speech and other rights afforded therein.

FOURTEENTH AFFIRMATIVE DEFENSE

LIME PRO's acts or omissions were privileged and/or justified.

FIFTEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part because LIME PRO's use of phrases or terms is accurate and would not be confusingly similar to ICON's purported trademarks.

SIXTEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part because purported infringing use of marks are of phrases or terms that are descriptive of relevant goods or services, and LIME PRO does not use such phrases as trademarks.

SEVENTEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part because LIME PRO takes no actions that would suggest sponsorship or endorsement by ICON.

EIGHTEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part on the grounds that its asserted trademarks lack distinctiveness.

NINETEENTH AFFIRMATIVE DEFENSE

ICON's claims are barred in whole or in part on the grounds that the alleged infringement, unfair competition and false patent marking is allegedly based on activity outside of the United States or California and is not actionable.

TWENTIETH AFFIRMATIVE DEFENSE

LIME PRO has insufficient knowledge and/or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available in this action. LIME

1 PRO therefore reserves the right to assert additional affirmative defenses in the event discovery
2 indicates that it may be appropriate.

3
4 **JURY DEMAND**

5 LIME PRO demands a trial by jury on all issues so triable.

6
7 **WHEREFORE**, LIME PRO respectfully requests judgment against ICON as follows:

8 A. ICON take nothing from LIME PRO by way of ICON's Complaint, and judgment be
9 rendered in favor of LIME PRO on ICON's Complaint.

10 B. LIME PRO be awarded such other relief as this Court deems appropriate.

11
12
13 DATED this 5th day of October 5, 2012

LEWIS KOHN & FITZWILLIAM LLP

14 By: /s/ Kent M. Walker
Kent M. Walker (173700)

15
16 Attorneys for Defendants
ISAAC CALDERON, MAHONRY J.
17 SANCHEZ, VENTO NORTH
AMERICA, LLC, and LIME PRO
18 EQUIPMENT USA
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

LIME PRO demands a trial by jury on all issues so triable.

DATED this 5th day of October 5, 2012

LEWIS KOHN & FITZWILLIAM LLP

By: /s/ Kent M. Walker
Kent M. Walker (173700)

Attorneys for Defendants
ISAAC CALDERON, MAHONRY J.
SANCHEZ, VENTO NORTH
AMERICA, LLC, and LIME PRO
EQUIPMENT USA

CERTIFICATE OF SERVICE

I hereby certify the following: I am over the age of 18 years and am not a party to the above-captioned action. I am a registered user of the CM/ECF system for the United States District Court for the Southern District of California.

On October 5, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. To the best of my knowledge, all counsel to be served in this action are registered CM/ECF users and will be served by the CM/ECF system.

I declare under penalties of perjury under the laws of the United States that the foregoing is true and correct.

/s/ Kent M. Walker
Kent M. Walker